

Article 15 | Enforcement

Sec. 15.1 Violations; Violators

15.1.1 Violation

- A. It is ~~shall be~~ unlawful and a violation of this ~~Ordinance code~~ to establish, create, expand, alter, occupy, or maintain any use, land development activity, or structure, including but not limited to signs and buildings, that violates or is inconsistent with any provision of this ~~Ordinance zoning code~~ or any order, approval, or authorization issued pursuant to this ~~Ordinance code~~. Approvals and authorizations include, but are not limited to: special use permits, sign permits, certificates of compliance, variances, building permits, development plans, ~~planting plans~~, site plans, and conditions of such permits, variances, and plans.
- B. It is ~~shall~~ also ~~be~~ a violation to engage in any construction, land development activity, or use, without all approvals and authorizations required by this ~~Ordinance code~~.
- C. Each day of a violation is ~~may be considered~~ a separate and distinct violation.

15.1.2 Violator

A. General

Violators ~~may~~ include any person who owns, leases, occupies, manages, ~~designs~~, or builds any structure or ~~engages in any~~ land development activity in violation of this ~~code~~ Ordinance and any person who owns, leases, or occupies a use in violation of this ~~code~~ Ordinance. A violation may be charged against more than one violator.

Commentary: *The definition of violator and the ability to charge more than one violator means that both tenant and landlord, where applicable, may be in violation and subject to penalties.*

B. Sedimentation and Erosion Control (Sec. 12.10)

The person responsible for violations of Sec. 12.10, Sedimentation and Erosion Control, consistent with the provisions of NCGS, §113A-64 shall mean:

1. The developer or other person who has, or holds himself out as having, financial or operation control over the land disturbing activity; or
2. The landowner or person in possession, or control of the land when he or she has directly or indirectly allowed the land disturbing activity or has benefited from it, or has failed to comply with any provisions of Sec. 12.10 of this ordinance, the North Carolina Sedimentation and Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it.

15.1.3 Responsibility

The Planning and/or Inspections Director, and/or County Engineer, or appropriate designees, shall enforce this Ordinance and the remedies authorized under this section. The ~~director~~ responsible individual shall have the authority to settle any

1 violations that involve the payment of money to the governing entity in exchange for
2 a written release from actual or potential claims.
3 For the purposes of this Section "Director" shall mean the Director of the Durham
4 City/County Planning Department and/or a sworn Zoning Enforcement Officer,
5 ~~except for Section 20.4.5.~~

Sec. 15.2 Determination of Violation

15.2.1 Notice of Violation

- A. When a violation is discovered, and is not remedied through informal means, written notice of the violation shall be given. This notice shall be delivered by:
1. ~~By~~ Hand delivery or certified mail to the violator's last known address; or
 2. ~~By~~ Certified mail or hand delivery to ~~or posting the notice at~~ the property in violation; or
 3. ~~By~~ Posting the notice at the property in violation.
- B. When service is made by certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after mailing. ~~provided that a notice of violation is posted in a conspicuous place on the premises affected.~~
- C. The notice shall ~~will~~ include a description of the violation and its location, the measures necessary to correct it, the possibility of civil penalties and judicial enforcement action, and notice of the right to appeal. The notice shall ~~will~~ also state the time period allowed, if any, to correct the violation, which time period may vary depending on the nature of the violation and knowledge of the violator.
- D. This notice ~~is~~ shall be an administrative determination subject to appeal as provided below.
- E. A notice of violation ~~is~~ shall not be required where a notice of the same violation has been issued to the same violator at the same property within the previous two years. In such cases, the violator may be charged with a continuing violation without further notice. ~~as provided in 20.4.6 below.~~ A notice shall also not be required where action is taken under Sec. 15.3.5 or Sec. 15.3.6.

15.2.2 Appeal to Board of Adjustment

- A. A violator who has received a notice of violation may appeal the Director's determination that a violation has occurred to the Board of Adjustment by making a written request and paying the appropriate fee within 30 days of receipt of the notice of violation.
- B. Citations that follow the original notice of violation may not be appealed to the Board.
- C. The Board shall hear the appeal and may affirm, modify, or revoke the determination of a violation. If there is no appeal, the Director's determination of the nature and degree of violation are final.

15.2.3 Failure to Comply with Notice or Board of Adjustment Decision

If the violator does not comply with a notice of violation which has not been appealed, or with a final decision of the Board of Adjustment, the violator shall be subject to enforcement action as prescribed in State law or by this Ordinance.

Sec. 15.3 Remedies; Enforcement Action

15.3.1 General

Enforcement may be by any one, all, or a combination of the remedies described below or in other sections of this Ordinance or otherwise authorized by common law or statute. Such statutes include but are not limited to NCGS §153A, Sections 123, 324, 334, and 361 et. seq. and §160A Sections 175, 365, 375, 389, and 421 et. seq.

15.3.2 Options for Remedying a Violation

A violator shall have several options available to come into compliance with this Ordinance, as listed below. During the efforts to correct the violation, enforcement actions may be stayed.

- A. Meet the Ordinance requirements cited in the Notice of Violation or citation.
- B. Where appropriate, obtain a zoning map change for the property to a district in which the activity would be permitted, in accordance with Sec. 3.5. Failure to obtain the zoning map change shall mean that the violation has not been corrected.
- C. Where appropriate, request a variance to the provisions of this Ordinance, in accordance with Sec. 3.15. Failure to obtain the variance shall mean that the violation has not been corrected.
- D. Amend the text of this Ordinance to eliminate the violation, in accordance with Sec. 3.20. Failure to obtain the approval of the text change shall mean that the violation has not been corrected.

15.3.3 Injunctive Relief in Superior Court

A violation may be corrected by any appropriate equitable remedy, a mandatory or prohibitory injunction, or an order of abatement as authorized by NCGS §160A-175 and NCGS §153A-123. The governing entity shall have the authority to execute an order of abatement if the violator does not comply with such order, and the costs of execution shall be a lien on the property in the nature of a mechanic's or materialman's lien.

15.3.4 Criminal Penalties

A violation shall constitute a misdemeanor or infraction, as provided by NCGS §14-4, subject to ~~the penalties established therein a maximum fine of \$500 and imprisonment of up to 30 days for each violation.~~

15.3.5 Judicial Action to Collect Civil Penalty

A civil action in the nature of debt may be filed in any court of competent jurisdiction to collect an unpaid civil penalty imposed under Sec. 15.4 below.

15.3.6 Permit Denial or Conditions, ~~or Revocation~~

Any permit, certificate, or other authorization that has been issued for property on which there is an uncorrected violation may be withheld, or may be conditioned on the correction of the violation and/or payment of a civil penalty, and/or posting of a compliance security.

15.3.7 Permit Revocation or Voiding

- A. ~~Any Such~~ permit, certificate or other authorization may ~~also~~ be revoked or voided upon a written determination by ~~the-of-the~~ Planning Director or the Inspections Director ~~Department~~, or designees, that the violation is substantial. The determination of such substantial violation shall be subject to appeal as provided in Sec. 15.2.2
- B. Any permit or certificate mistakenly issued in violation of State law or local ordinance, or issued on the basis of misrepresentations by the applicant, owner, or owner's agent may be revoked or voided without such written determination as required above.

15.3.8 Stop Work Order

- A. When the violation pertains to construction or alteration of a structure, a stop work order may be issued in accordance with NCGS §160A-421 and NCGS §153A-361 or the NC Building Code. All zoning requirements pertaining to the location and siting of structures are considered local building laws for application of NCGS §160A-421 and NCGS §153A-361.
- B. Appeal of an order relating to a local building law shall initially be to ~~the-of the~~ Inspections Director or designee ~~Department or his/her designee~~ who shall conduct a hearing within 10 working days of the issuance of the order. Further appeal may be made to the Board of Adjustment.

15.3.9 Additional Remedies for Sign Violations

- A. Violations of Article 11, Sign Standards, ~~the sign section of this ordinance~~ may be remedied through all of the remedies available in this section.
- B. In addition, the Inspections Director, or designee, may revoke the sign permit for a sign or sign structure in violation, including violations of restrictions on sign copy or the content of a sign face, and may require that the sign copy or sign face be removed, or that the structure on which such copy or face appears be removed. Removal of a sign structure shall not be required where the sign structure could legally be constructed in accordance with the provisions of ~~the~~ Article 11, Sign Standards ~~sign code~~ in effect at the time the violation occurs and where the owner or operator of such sign structure can demonstrate to the Inspections Director's, or designee, satisfaction that he or she had no knowledge concerning the requirements of Article 11, Sign Standards, ~~the sign code~~.
- C. The Planning Director, or designee, may also remove unpermitted signs, faces, and structures that are located in the public right of way, or on utility poles or structures within the public right of way, or signs, faces, and structures-for which no owner can be located, or and which present a danger to the public health or safety, or signs in violation of this Ordinance.
- D. Any repeated violation of the same provision of Article 11, Sign Standards, by the same individual or corporation at an identical or different location may result in immediate action against the individual or corporation, and may be considered a subsequent ~~citation~~ violation for the same offense, and each day a separate violation.

Sec. 15.4 Civil Penalty

15.4.1 General

The Planning Director, or designee, may issue one or more citations and impose one or more civil penalties for a violation, as provided below. If the violator does not pay the civil penalty, the governing entity may collect it in court through a civil action in the nature of debt.

15.4.2 Citation

The Planning Director, or designee, may issue a citation and civil penalty for a violation.

15.4.3 Notice

Notice of the citation and civil penalty ~~will~~ shall be given in the same manner as provided in Sec. 15.2.1, above. The notice shall include a copy of the notice of violation, the amount of the civil penalty, information about where to pay the civil penalty, the deadline for payment (which shall be 15 days from the date of receipt of the notice), and the possibility of civil and/or criminal enforcement.

15.4.4 Amount

A. The Planning Director, or designee, ~~or his designee~~ may impose a civil penalty of up to \$300 per violation.
~~If a violator has remedied the violation prior to imposition of the penalty, but not within the deadlines given in the notice of violation, and if the violator is not guilty of previous violations then the penalty shall not exceed \$50.~~

B. The Planning Director, or designee, shall formulate written guidelines for zoning enforcement ~~officers personnel~~ to use in assessing civil penalties. Criteria for assessing civil penalties shall include, but not be limited to:

1. The violator's knowledge of legal requirements;
2. Whether the violator has been guilty of past violations;
3. The possible profit to the violator in continuing the violation;
4. The impact of the violation on the community;
5. The degree of noncompliance; and
6. The cost and time required to remedy the violation.

15.4.5 Settlement of Violations ~~Claims~~

A. The Planning Director, ~~or designee, is~~ shall be authorized to determine the amount of payment that ~~will~~ shall be accepted in full and final settlement of some or all of the claims the City or County governing body may have in connection with the violation. The Planning Director, ~~or designee~~, shall indicate in writing the claims from which the violator is released.

B. If the violation has not been remedied, payment shall not release a violator from potential criminal prosecution or a claim for injunctive relief and/or an order of abatement.

15.4.6 Continuing Violations

- A. The Planning Director, or designee, may issue a citation for a violation that continues without being corrected.
- B. The violator in such cases may be assessed a civil penalty for each day of the continuing violation.
- C. An initial citation for a single violation ~~must~~ shall be issued before a citation for a continuing violation is may be issued. If the violator has failed to pay the civil penalty and correct the violation after the initial citation, the violator is shall be subject to a citation for a continuing violation with a daily civil penalty.
- D. An initial citation is shall not be required if the Planning Director, or designee, ~~Department~~ has previously issued a notice of violation ~~citation~~ to the violator for the same violation ~~at the same location~~ within the previous two years, or if the violator has been specifically warned concerning the violation.

Commentary: "Specifically warned concerning the violation" includes any previous violator who has received a notice of violation or citation for the same violation – whether or not at the current location.

- E. The Planning Director, or designee, may give a single ~~notice of a~~ citation for a continuing violation. The citation notice ~~must~~ shall contain a copy of the notice of violation and ~~must~~ shall state the violation is continuing, that a daily civil penalty of a specified amount is being imposed, and that the penalty is shall be cumulative.

15.4.7 Special Penalties for Destruction of Existing Vegetation

A. General

1. Any trees preserved on a development tract in order to meet Ordinance requirements or otherwise indicated to be preserved shall meet the standards of Sec. 8.3.3, Protection of Existing Vegetation.
2. Damaging or destroying any tree preservation area that is indicated on any site plan, development plan, preliminary plat, or final plat, ~~major special-use permit or minor special-use permit~~ shall constitute a violation of the Durham Zoning ~~this~~ Ordinance.

- B. ~~However,~~ Damage or destruction of preserved trees by an act of God shall not be subject to the provisions of this section. ~~10.12, Penalties for Destruction of Existing Vegetation.~~ Any new trees planted as part of required landscaping under Article 9 shall be maintained and, if necessary, replaced with vegetation. Failure to maintain and/or replace said vegetation shall be subject to the provisions of this section.

C. Applicability and Penalties

1. Where any tree with a diameter greater than 10 inches dbh ~~measured at a point 4½ feet above the ground~~ in an area indicated on approved plans to be preserved is damaged, destroyed or removed, such violation shall be penalized as follows:
 - a. A fine in an amount equal to one and one-half times the monetary value of the trees damaged, destroyed or removed. For purposes of such determination the Planning Director, or designee, ~~or Director's designee~~

shall apply the most current standards of the Council of Tree and Landscape Appraisers or a similar method in common use; and

- b. Trees shall be replaced by new trees of a similar species with at least a two and one-half inch caliper and a cumulative total caliper ~~at least~~ greater than the original tree.

- 2. Where tree preservation areas are damaged, destroyed or removed and no documentation exists about previous tree cover, such violation shall be penalized as follows:

- a. A fine of up to \$2.00 ~~dollars~~ per square foot of disturbed area, not to exceed \$40,000 per violation; and

- b. Replacement vegetation shall be provided in accordance with the buffer landscaping standards of Article 9, Landscaping and Buffering. ~~Section 10.2.5.2, Planted Vegetation.~~

D. Certificate of Compliance

Any fine ~~must~~ shall be paid and required replacement trees planted before a Certificate of Compliance is issued. Enumeration of these civil penalties shall not be construed to prohibit the use of any other remedy authorized by ordinance or state law.

Sec. 15.5 Sedimentation and Erosion Control Enforcement and Penalties

15.5.1 Agents, officials or other qualified persons authorized by the Sedimentation and Erosion Control Officer may periodically inspect land-disturbing activities to ensure compliance with the North Carolina State Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it (hereafter referred to as “the Act” in this Section), Sec. 3.8, and Sec. 12.10 of this Ordinance ~~this article~~ or rules or orders adopted or issued pursuant to these sections ~~this article~~, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval of each erosion control plan.

15.5.2 No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of Durham County while that person is lawfully inspecting or attempting to inspect a land-disturbing activity under this section.

15.5.3 If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, Sec. 3.8, and Sec. 12.10 of this Ordinance ~~this article~~, or rules or orders adopted or issued pursuant to them, or has failed to obtain a land-disturbing permit or has failed to comply with an approved plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under NCGS § 1A-1, rule 4. The notice shall specify a date by which the person must comply with the Act, this Article, or rules, or orders adopted pursuant to this Article and inform the person of the actions that need to be taken to comply with the Act, Sec. 3.8, and Sec. 12.10 of this Ordinance, ~~this article~~, or rules or orders adopted pursuant to these sections. ~~article~~. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his/her official duties. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated.

15.5.4 The Sedimentation and Erosion Control Officer, or ~~their~~ designee shall have the power to conduct such investigations as he/she ~~it~~ may reasonably deem necessary to carry out their duties as prescribed in this Section ~~article~~, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

15.5.5 The Sedimentation and Erosion Control Officer, or ~~their~~ designee shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

15.5.6 Revocation of Permits

- A.** The County Engineer shall have the power to revoke land-disturbing permits issued pursuant to Sec. 3.8, and Sec. 12.10 ~~this article~~. When the Sedimentation and Erosion Control Officer, or ~~their~~ designee, proposes to the County Engineer that they revoke a land-disturbing permit, the Sedimentation and Erosion Control Officer, or ~~their~~ designee shall serve the permittee or other responsible person with a notice of intent

to revoke specifying the time and date of a pre-termination hearing to be held before the County Engineer. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre-termination hearing.

- B. Should the County Engineer determine that the land disturbing permit should be revoked, ~~then they~~ he/she shall serve the permittee, or other responsible person, with a notice of revocation. Upon receipt of the notice of revocation, the responsible person shall immediately cause or order the cessation of all land-disturbing activities except those activities which are specifically directed towards bringing the site into a state of compliance.
- C. The person responsible for the land-disturbing activity may appeal the revocation of a land-disturbing permit to the Board of ~~county~~ Commissioners by submitting a written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of the written notice of revocation. The written demand must specify, in detail ~~with particularity~~, the factual and/or legal basis for the appeal. No grounds, other than those so specified, may be argued.
- D. No person shall resume or continue any land-disturbing activity other than those necessary to bring the site into a state of compliance after receipt of a revocation notice and before reissuance of a land-disturbing permit or decision of the Board of ~~county~~ Commissioners reinstating a land-disturbing permit. After the Sedimentation and Erosion Control Officer, or ~~their~~ designee, has inspected the site and approved the remedial work, the responsible party may reapply for a land-disturbing permit. The fee for reapplication shall be 100% of the current application fee.

15.5.7 Civil Penalties

- A. Any person who violates any of the provisions of this Section, Sec. 3.8, or Sec. 12.10, ~~article, or rules or orders adopted or issued pursuant to this article~~ or who initiates or continues a land-disturbing activity for which an erosion control plan and/or land-disturbing permit is required except in accordance with the terms, conditions and provisions of an approved erosion control plan and/or land-disturbing permit shall be subject to a civil penalty. The maximum civil penalty for a violation shall be \$5,000.00. A civil penalty may be imposed from the date the violation was detected. Each day of continuing violation shall constitute a separate violation.
- B. The Sedimentation and Erosion Control Officer shall impose the civil penalty authorized by this section. The Sedimentation and Erosion Control Officer shall notify the person upon whom the civil penalty is imposed, of the amount of the penalty and the reason for the penalty. In determining the amount of the penalty the Sedimentation and Erosion Control Officer shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with Sec. 3.8, Sec. 12.10, or this Section ~~this article, the Act, and rules promulgated in furtherance thereof~~. The notice of civil penalty shall be served by any means authorized under NCGS §1A-1, rule 4, and shall direct the violator to either pay the civil penalty or contest the civil penalty, within 30 days after receipt of the notice of civil penalty, by filing a petition for a contested case under NCGS §150B, art. 3. The administrative law judge hearing the matter shall make a recommended decision to the Board of ~~county~~ Commissioners. If either party wishes to challenge the recommended decision, they must file with the Clerk to the Board of Commissioners, and serve on

the other parties, and the Office of Administrative Hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the recommended decision, and other written argument they wish to submit, within 30 days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same, but may not use this subsequent filing to submit new, or additional, exceptions and objections of their own. The recommended decision will be reviewed by the Board of ~~county~~ Commissioners within 90 days after the official record in this matter is served upon the Clerk to the Board of Commissioners by the Office of Administrative Hearings. The Board of ~~county~~ Commissioners shall adopt or modify the recommended decision consistent with the provisions of NCGS. §150B-36. Appeal of the decision of the Board of ~~county~~ Commissioners shall be in accordance with NCGS §150B, art. 4.

- C. If payment is not received within 30 days after demand for payment is made the matter will be referred to the County Attorney's Office for initiation of a civil action to recover the amount of the civil penalty. A civil penalty that is not contested is due when the violator is served with a notice of civil penalty. A civil penalty that is contested is due at the conclusion of the administrative and judicial review of the civil penalty, if the violator is found at fault.
- D. The clear proceeds of civil penalties collected pursuant to this Article shall be credited to the Durham Public Schools in accordance with the provisions of NCGS §115C-437.

15.5.8 Criminal Penalties

Any person who knowingly or willfully violates any provision of Sec. 3.8, Sec. 12.10, or this Section, ~~the Act, this article, or rule or order adopted or issued pursuant to the Act or this article~~, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control plan and/or land-disturbing permit is required except in accordance with the terms, conditions and provisions of an approved plan and/or land-disturbing permit, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000.00, as provided in NCGS §113A-64.

15.5.9 Enforcement Alternatives

Violation of any provision of this Article shall result in forfeiture of any applicable security or portion thereof required under Sec. 3.8.3 14-65(g).

- A. Whenever there is reasonable cause to believe that any person is violating or threatening to violate Sec. 3.8, or Sec. 12.10, ~~this article~~ or any rule or order adopted or issued pursuant to the Act, ~~these sections this article~~, or any term, condition or provision of an approved erosion control plan, the County Attorney may, either before or after the institution of any other action or proceeding authorized by this Section article, institute a civil action as provided in Sec. 15.5.7 ~~section 1-6~~ of this Code, above, for injunctive relief to restrain the violation or threatened violation in superior court.
- B. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of Sec. 3.8, Sec. 12.10. ~~this article, or the Act.~~

- 1 C. Land-disturbing activities exceeding 12,000 square feet undertaken without first
2 obtaining a land-disturbing permit, but which are required by Sec. 3.8 ~~this article~~ to
3 obtain a land-disturbing permit, shall be subject to a permit fee of 200% of the
4 current applicable fee, in addition to any civil penalty assigned per Sec. 15.5.7.
- 5 D. Conveyance of the property subject to the permit, in whole or in part, shall not
6 terminate the permit holder's obligations under this Article until such time as a
7 substitute, or succeeding, permit is approved by the sedimentation and erosion
8 control officer, or their designee.

9 **15.5.10 Restoration of Areas Affected by Failure to Comply**

10 The Sedimentation and Erosion Control Officer may require a person who engaged in
11 a land disturbing activity and failed to retain sediment generated by the activity, as
12 required by NCGS §113A-57(3) and Sec. 12.10.6C ~~14-56(3)~~ of this Article, to restore
13 the waters and land affected by the failure so as to minimize the detrimental effects
14 of the resulting pollution by sedimentation. This authority is in addition to any other
15 civil or criminal penalty or injunctive relief authorized under this Section ~~article~~, or
16 the Act.
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Sec. 15.6 Inspections and Investigations

15.6.1 Authorization of Inspection Program

A program of inspection and investigations to determine compliance with this Ordinance ~~the zoning code~~ and orders, plans, permits, and authorizations issued under this Ordinance ~~the code~~ is hereby authorized. This program shall be conducted under the general authority of the Planning Director, or designee, and shall be carried out by zoning enforcement officers designated by the Planning Director, or designee.

15.6.2 Inspections of Private Property

- A. Inspections on private property to determine compliance may be made at any reasonable time with the consent of the occupant of the property.
- B. Inspections may also be made when an administrative search and inspection warrant has been issued pursuant to NCGS §15-27.2 by a proper judicial official. To obtain a warrant, the enforcement officer ~~must~~ shall show through facts supplied in a sworn affidavit that either:
 1. The inspection is being conducted as part of an administrative plan to inspect all properties of a certain type, and the determination of the properties to inspect was made in accordance with neutral criteria; or
 2. That there is probable cause for believing that a violation may exist.

Violations of Sign Permits

~~Violations of the requirements of this Section shall be violations of the zoning ordinance. Sign permits may be revoked upon violations of this Section and signs in violation may be removed from the property or right of way in which they are located by a Zoning Enforcement Officer.~~

~~Any removal costs may be charged to the sign owner.~~

~~Citations may be issued by the Zoning Enforcement Officer. Failure to correct a violation or pay a fine may result in criminal charges. If a violation is of a continuing nature, each day during which the violation continues is a separate violation.~~

~~The following civil penalties are established for violations under this section:~~

~~Warning citation: Correct violation within 72 hours.~~

~~First citation: \$25.00~~

~~Second and subsequent citation for the same offense: \$50.00~~

~~Any repeated violation of the same provision of this ordinance by the same individual or corporation at an identical or different location may result in immediate action against the individual or corporation, and shall be considered a subsequent citation for the same offense, and each day a separate violation~~

~~Penalties (Erosion and Sedimentation)~~

~~Revocation of Permits~~

~~The county engineer shall have the power to revoke land disturbing permits issued pursuant to this article. When the sedimentation and erosion control officer, or their designee, proposes to the county engineer that they revoke a land disturbing permit, the sedimentation and erosion control officer, or their designee shall serve the permittee or other responsible person with a notice of intent to revoke specifying the time and date of a pre-termination hearing to be held before the county engineer. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre-termination hearing.~~

~~Should the county engineer determine that the land disturbing permit should be revoked then they shall serve the permittee, or other responsible person, with a notice of revocation. Upon~~

receipt of the notice of revocation, the responsible person shall immediately cause or order the cessation of all land-disturbing activities except those activities which are specifically directed towards bringing the site into a state of compliance.

The person responsible for the land-disturbing activity may appeal the revocation of a land-disturbing permit to the board of county commissioners by submitting a written demand to the clerk to the board for a hearing within 15 days after receipt of the written notice of revocation. The written demand must specify, with particularity, the factual and/or legal basis for the appeal. No grounds, other than those so specified, may be argued.

No person shall resume or continue any land-disturbing activity other than those necessary to bring the site into a state of compliance after receipt of a revocation notice and before reissuance of a land-disturbing permit or decision of the board of county commissioners reinstating a land-disturbing permit. After the sedimentation and erosion control officer, or their designee, has inspected the site and approved the remedial work, the responsible party may reapply for a land-disturbing permit. The fee for reapplication shall be 100 percent of the current application fee.

Civil Penalties

Any person who violates any of the provisions of this article, or rules or orders adopted or issued pursuant to this article or who initiates or continues a land-disturbing activity for which an erosion control plan and/or land-disturbing permit is required except in accordance with the terms, conditions and provisions of an approved plan and/or land-disturbing permit shall be subject to a civil penalty. The maximum civil penalty for a violation shall be \$5,000.00. A civil penalty may be imposed from the date the violation was detected. Each day of continuing violation shall constitute a separate violation.

The sedimentation and erosion control officer shall impose the civil penalty authorized by this section. The sedimentation and erosion control officer shall notify the person upon whom the civil penalty is imposed, of the amount of the penalty and the reason for the penalty. In determining the amount of the penalty the sedimentation and erosion control officer shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this article, the Act, and rules promulgated in furtherance thereof. The notice of civil penalty shall be served by any means authorized under G.S. § 1A-1, rule 4, and shall direct the violator to either pay the civil penalty or contest the civil penalty, within 30 days after receipt of the notice of civil penalty, by filing a petition for a contested case under G.S. ch. 150B, art. 3. The administrative law judge hearing the matter shall make a recommended decision to the board of county commissioners. If either party wishes to challenge the recommended decision they must file with the clerk to the board, and serve on the other parties, and the office of administrative hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the recommended decision, and other written argument they wish to submit, within 30 days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same, but may not use this subsequent filing to submit new, or additional, exceptions and objections of their own. The recommended decision will be reviewed by the board of county commissioners within 90 days after the official record in this matter is served upon the clerk to the board by the office of administrative hearings. The board of county commissioners shall adopt or modify the recommended decision consistent with the provisions of G.S. § 150B-36. Appeal of the decision of the board of county commissioners shall be in accordance with G.S. ch. 150B, art. 4.

Repealed.

If payment is not received within 30 days after demand for payment is made the matter will be referred to the county attorney's office for initiation of a civil action to recover the amount of the civil penalty. A civil penalty that is not contested is due when the violator is served with a notice

1 of civil penalty. A civil penalty that is contested is due at the conclusion of the administrative
2 and judicial review of the civil penalty.

3 The clear proceeds of civil penalties collected pursuant to this article shall be credited to the
4 Durham Public Schools in accordance with the provisions of G.S. § 115C-437.

5 Criminal Penalties

6 Any person who knowingly or willfully violates any provision of the Act, this article, or rule or
7 order adopted or issued pursuant to the Act or this article, or who knowingly or willfully initiates
8 or continues a land-disturbing activity for which an erosion control plan and/or land-disturbing
9 permit is required except in accordance with the terms, conditions and provisions of an
10 approved plan and/or land-disturbing permit, shall be guilty of a Class 2 misdemeanor which
11 may include a fine not to exceed \$5,000.00, as provided in G.S. § 113A-64.

12 Enforcement Alternatives

13 Violation of any provision of this article shall result in forfeiture of any applicable security or
14 portion thereof required under subsection 14-65(g).

15 (Ord. of 10-23-00, §§ 1, 2)

16 Injunctive Relief

17 Whenever there is reasonable cause to believe that any person is violating or threatening to
18 violate this article or any rule or order adopted or issued pursuant to the Act, this article, or any
19 term, condition or provision of an approved erosion control plan, the county attorney may,
20 either before or after the institution of any other action or proceeding authorized by this article,
21 institute a civil action as provided in section 1-6 of this Code, above, for injunctive relief to
22 restrain the violation or threatened violation in superior court.

23 The institution of an action for injunctive relief under this section shall not relieve any party to
24 such proceedings from any civil or criminal penalty prescribed for violations of this article, or
25 the Act.

26 Restoration of areas affected by failure to comply.

27 The sedimentation and erosion control officer may require a person who engaged in a land
28 disturbing activity and failed to retain sediment generated by the activity, as required by G.S. §
29 113A-57(3) and section 14-56(3) of this article, to restore the waters and land affected by the
30 failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This
31 authority is in addition to any other civil or criminal penalty or injunctive relief authorized
32 under this article, or the Act.

33 Penalties (County Stormwater)

34 Civil penalties

35 Any person who violates any of the provisions of this article, or rules or orders adopted or issued
36 pursuant to this article or who initiates or continues a development for which a stormwater
37 control plan and/or permit is required except in accordance with the terms, conditions and
38 provisions of an approved plan and/or permit shall be subject to a civil penalty. The maximum
39 civil penalty for a violation is \$5,000.00 per day.

40 No penalty shall be assessed until the person alleged to be in violation has been notified of the
41 violation as provided in section 14-157 of this article. If after the allotted time period has
42 expired, the violator has not completed corrective action, a civil penalty may be assessed from
43 the date the violation was detected. However, no time period for compliance need be given for
44 failure to submit a stormwater control plan for approval, for failure to obtain a stormwater
45 permit, for obstructing, hampering or interfering with an authorized representative while in the
46 process of carrying out his official duties, or for an illegal discharge. Each day of continuing
47 violation shall constitute a separate violation.

48 The county engineer, upon consideration of the recommendation of the stormwater
49 administrator, shall assess the civil penalty authorized by this section. The county engineer shall
50 notify the person who is assessed the civil penalty of the amount of the penalty and the reason
51 for assessing the penalty. In determining the amount of the penalty the following factors shall be

1 ~~considered: the degree and extent of harm caused by the violation, the cost, if any, of rectifying~~
2 ~~the damage, the amount of money the violator saved by noncompliance, whether the violation~~
3 ~~was committed willfully, and the prior record of the violator in complying or failing to comply~~
4 ~~with the Act, promulgated rules and this article. The notice of assessment shall be served by~~
5 ~~certified mail, return receipt requested, or personal service by the sheriff, county engineer,~~
6 ~~stormwater administrator, or their designee, and shall direct the violator to either pay the~~
7 ~~assessment or contest the assessment, within 15 days after receipt of the notice of assessment,~~
8 ~~by requesting a hearing before the board of county commissioners.~~

9 ~~If payment is not received within 30 days after the assessment is due, the matter will be referred~~
10 ~~to the county attorney's office for initiation of a civil action to recover the amount of the civil~~
11 ~~penalty. An assessment that is not contested is due when the violator is served with a notice of~~
12 ~~assessment. An assessment that is contested is due at the conclusion of the administrative~~
13 ~~review of the assessment.~~

14 ~~Criminal penalties~~

15 ~~Violation of this article is punishable as a misdemeanor as provided in section 1-6 of this Code,~~
16 ~~above.~~